

**MINUTES OF THE  
LAKE COUNTY PLANNING COMMISSION  
November 27, 2007**

The Lake County Planning Commission hereby finds and determines that all formal actions were taken in an open meeting of this Planning Commission and that all the deliberations of the Planning Commission and its committees, if any, which resulted in formal actions, were taken in meetings open to the public in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Chairman Brotzman called the meeting to order at 7:00 p.m.

**ROLL CALL**

The following members were present: Messrs. Adams, Aveni (alt. for Aufuldish), Brotzman, Klco (alt. for Troy), Schaedlich, Siegel, Smith (Alt. for Sines), Zondag, and Messes. Hausch and Pesec. Staff present: Messrs. Webster, Radachy, and Ms. Myers.

**MINUTES**

Mr. Schaedlich moved and Mr. Smith seconded the motion to approve the minutes of October 30, 2007 as submitted.

Eight voted "Aye".

Mr. Aveni arrived at the meeting.

**FINANCIAL REPORT**

Mr. Smith questioned the negative travel expense amount on the Financial Report and was informed by Mr. Webster that the negative amount was indicative of transferring from one account to another. When asked what the office will do if monies needed to be expensed from accounts with low or zeroed amounts, Mr. Webster stated he would have to go the Lake County Commissioners for funds or shift money from another account.

Mr. Siegel moved to approve the October, 2007 Financial Report as submitted and Mr. Smith seconded the motion.

Nine voted "Aye".

**PUBLIC COMMENT**

There was no public comment.

**LEGAL REPORT**

Ms. Patricia Nocero, Assistant Prosecutor, said there were no legal issues to report.

**DIRECTOR'S REPORT**

Mr. Webster gave an update on the various projects in progress.

- We will be meeting with Madison Township and Madison Village tomorrow night, November 28 at 7:00 p.m. at the Madison Town Hall. The Madison Township Comprehensive Plan should be ready for review in December or January. The Village

Comprehensive Plan is completed but the committee expressed the desire to review this plan in conjunction with the Township. .

- We will be meeting on December 10 with North Perry Village at 7:00 p.m. at the Village Hall to get feedback on the final draft of their plan.
- Information on the APA Audio Conference on November 7, 2007 held in the Planning Commission Library entitled “Staying Out of Court by Avoiding Pitfalls” is included in tonight’s package. The next audio conferences will include a two-part audio conference on December 5, 2007 and January 16, 2008 in the Westlake City Hall Council Chambers from 3:00 to 5:00 p.m. dealing with the functions of the planning commission. Reservations need to be made.

## ANNOUNCEMENTS

A free seminar series on Tuesday, December 11, 2007 and Tuesday, February 26, 2008 will be held on “Universal Design and Visitability” of accessible housing and “Fully Accessible Housing” from 12:00 to 4:00 p.m. at The Cleveland Foundation, Steven Minter Conference Center, 1422 Euclid Avenue, 12<sup>th</sup> floor, Cleveland, Ohio.

## SUBDIVISION REVIEW:

### Concord Township: Nature Preserve South, resubmitted final plat

There was one subdivision review on a replat of the Nature Preserve South subdivision originally recorded in 2004. Mr. Radachy stated it is located on the south side of Girdled Road, west of Ravenna Road and south of Nature Preserve North. Eye-Will Development is the developer and Barrington Consulting Group, Inc. is the surveyor. Land Design did the original plat for Osborne and transferred this portion to Eye-Will Development. The developers wish to remove the restricted wetland areas shown on sublots 5 and 40.

The following are the proposed stipulations and comments for this resubmitted final plat.

### Proposed Resubmitted Final Plat Stipulations:

1. This is a replat of sublots 1, 5, 6, 7, 39 and 40, not a plat of correction. All appropriate approvals must be obtained prior to filing of this change in plat. *Article VI Section 6*
  - a. Modifications to plat may require the re-filing of the plat. *L.C. Engineer*
2. The storm water easement on sublots 6 and 7 shall not be moved. *Article IV Section 3(C)*
  - a. Additionally, the revised final plat submitted with this packet to the Lake County Planning Commission shows a change to the 20-ft. storm water easement between sublots #6 and #7. The original recorded final plat shows the 20-ft storm water easement following the existing wetland contained within the easement. If the developer is proposing to change the boundaries of the 20-ft. storm water easement in order to fill or re-direct the seepage that is creating the wetland at this location, this would also be included as fill activity at the site. This filling activity would be added to the total allowable fill for the site as well. *LCSWCD*

- b. Barrington Consulting Group, Inc. requested the District to review this issue and on May 30, 2007 a site visit was conducted with Mr. Mark Gronceski, Biologist with the USACE – Orwell Field Office in which this area was confirmed as wetlands. Any relocation of the drainage or filling of the area may require additional permitting. *LCSWCD*
- 3. The storm water easement on sublots 1, 6 and 7 and sublots 25 – 30 shall be replatted as local riparian easement. Language is on file with the Planning Commission Staff. *Article IV Section 3(C)*
  - a. Remove stormwater easement between S/L 6 & S/L 7, and on S/L 1. This stream is not on the regional map for the Lake County Stormwater Dept. The easement should be designated as a local riparian easement. *L.C. Stormwater Dept.*
- 4. Verification or approval from the permitting agency, US Army Corps of Engineers shall be obtained prior to removing the restricted areas on Sublots 5 and 40. *Article IV Section 3(A)(1)*
  - a. The proper authority must confirm wetland identification. *L.C. Engineer*
  - b. Verification from the permitting agency, US Army Corps of Engineers – Buffalo District, should be provided to the County documenting approved additional wetland fill activity for Nature Preserve South Subdivision. *LCSWCD*
  - c. A field visit to the site on November 21, 2007 indicates that portions of Wetland ‘C’ on subplot #40 and possibly subplot #39 were filled during the construction of Rainbow Drive and the accompanying utility easement. The developer had proposed to fill 0.01 acres of wetland on subplot #40 as part of the approved USACE Nationwide Permit (NWP)#39. The actual fill amounts to Wetland ‘C’ should be verified by the developer through correspondence with the USACE. *LCSWCD*
  - d. Wetland ‘D’ on subplot #5 remains undisturbed. The developer had proposed to fill 0.02 acres of Wetland ‘D’ as part of the approved NWP #39. The total acreage for Wetland ‘D’ is 0.04 acres. *LCSWCD* Wetland ‘A’ is contained within sublots #24 & #25. Both sublots #24 and #25 now contain constructed homes which appear to have encroached into Wetland ‘A’ beyond the permitted acreage to be filled as there is no clear flagging, fencing or markings to visibly indicate the boundary of permitted fill for each subplot. Sublot #24 is listed as having a 0.01 acre fill and subplot #25 is listed as having a 0.05 acre fill for construction of the home footprints. The actual fill amounts to Wetland ‘A’ should be verified by the developer through correspondence with the USACE. *LCSWCD*
  - e. If the fill activity at the site is added to the proposed fill of Wetland ‘A’ and Wetland ‘C’ and exceeds 0.10 acres of impact, a modification to the previously issued NWP #39 may be required by the USACE as the original NWP #39 permit issued by the

USACE only allowed for up to 0.10 acres of fill for the entire subdivision project.  
*LCSWCD*

5. Additional information, such as an as-built determination of the existing wetland fills should be provided in order to determine if the final plat can indeed be revised. *LCSWCD*

Proposed Resubmitted Final Plat Comments:

1. Has the Army Corps of Engineers been involved in the review of these areas? *Concord Twp.*
2. What is the purpose for changing the location of the stormwater easement between sublots 6 & 7? *Concord Twp.*
3. The Township would like to see further justification for the changes being made on Sublots 5, 6 & 7. *Concord Twp.*

Mr. Radachy continued stating the original plat was filed in 2005. The owner and developer have also made an alteration to the stormwater easement between sublots 6 and 7 that is currently under the Lake County Commissioners' control. This would have to be returned to its original condition.

According to a letter submitted in the Planning Commission's package, Mr. William Dawson of Eye-Will Development had secured Mr. Lawrence Ludwig, P.W.S. of Chagrin Valley Engineering, LTD. to evaluate the wetlands in the subdivision. In Mr. Ludwig's opinion, subplot 40 on Rainbow Drive no longer met the criteria set forth by the United States Army Corps of Engineers as a wetland on subplot 40 because of the lack of wetland hydrology and a predominance of wetland vegetation. Nature Preserve South was designed to meet the conditions of USACOE's Nationwide Permit program in effect in 2004, which allows up to one-tenth of an acre of wetland to be impacted by development activities without the need for mitigation. The development activities of this subdivision commenced before March 18, 2007 and should allow filling to be done prior to March 18, 2008, including the minor wetland on Sublot 5 off Rainbow Drive.

The Lake County Soil and Water Conservation District commented that this subdivision had already used the 1/10<sup>th</sup> because it is determined for the entire subdivision, not just one subplot. They and the staff stipulated that a verification of the existing wetland fills should be made by the permitting agency that has jurisdiction prior to removing the restricted areas on sublots 5 and 40.

Mr. Zondag arrived at the meeting at this time.

Staff stipulated that the storm water easement on sublots 1, 6 and 7 and sublots 25 to 30 should be replatted as local riparian easements as policies have since changed on storm water easements. This would still protect the streams and allow them to be policed by the homeowners as opposed to the Commissioners. Lake County Stormwater is more interested in taking

easements on regional streams as shown on their streams map that move water from one subdivision into another versus a local stream. The staff recommends approval of the proposed stipulations submitted.

The following concerns were discussed:

- Mr. Smith expressed concern on houses that would be built on sublots 20 and 29 and Mr. Radachy stated there was room near the setback lines and passed a copy of the plat showing setback lines around to the members for them for review.
- The Subdivision Regulations state the Commission has to act within 30 days on a plat that is submitted, has the ability to stipulate that they must obtain permits from the appropriate agency and can hold final approval until that stipulation is met.
- Mr. Aveni clarified that qualifying for a nationwide wetland permit from the U.S. Army Corps of Engineers is different than an individual permit, which goes through an extensive review. He wondered if the Commission would be asking for the developer to get an individual permit from the Corps and may be requiring something that the Army Corps does not require. Mr. Aveni felt the members may be tying an enforcement issue together with a subdivision approval issue and, at minimum, staff should ask our legal counsel to research the issue of whether or not the stipulations are something that can be imposed by the Commission.
- Mr. David Novak from Barrington Development group representing Eye-Will Development stated a request for wetland clarifications on the restricted areas on sublots 5 and 40 was made and thought this body was talking about having the storm water easements changed on 25-30 and whatever wetlands that may or may not be impacted (not by them) on sublots 24 and 25. He questioned how they were expected to change an easement on someone else's property.
- Mr. Novak explained there were certain guidelines that had to be met in the permitting process regarding disturbing streams, impacting wetlands, etc. and by not exceeding those guidelines (i.e. not filling more than 1/10 of an acre of wetlands and not disturbing more than 200 linear feet of a stream or 300 in some instances), they should be within permitting limits. Paperwork is done under a nationwide permit so a developer does not have to go through the formal process of an individual permit through the Army Corps, which could take six months to two years.
- The developer hired Larry Ludwig from Chagrin Valley Engineering, Ltd., who is a wetlands expert for advice.. Although sublots 5 and 40 actually had wetlands at the time of the original permitting, after improvements of the subdivision were made, the water source had been cut off from the wetland. If there is a problem with filling a wetland that they were not allowed to fill, and it comes to someone's attention, the developer will go back to Mr. Ludwig because of his opinion.
- Mr. Novak stated, "When all is said and done, if that restricted area is not removed from subplot 5, he could guarantee them that it will come up and raise its ugly head when that owner goes to sell to his house." They were trying to do things the right way.
- Mr. Zondag was concerned about where the water was redirected and what improvements were put in to intercept the water. Mr. Novak stated a roadway was built between the uphill watershed and subplot 40 that cut off the source.
- Ms. Pesec was concerned about the wetland being disturbed. There were a lot of

extenuating circumstances in this plat regarding the existing subdivision (i.e. some houses partially built, one wetland being starved and people that bought the property having built on another part of a wetland) and, therefore, the correct governmental agency should be asked to verify that the whole subdivision will continue to stay in compliance regarding subplot 5 and 40, not the other sublots.

- Mr. Novak stated they should not be held responsible for filling done on sublots 24 and 25 because they did not do it. They said they sold their property to someone else and should still have their 1/10 exemption to be used on subplot 5.
- The Lake County Soil and Water Conservation District (Soil and Water) had commented that the nationwide permit covered the entire subdivision and 1/10 has already been filled.
- Mr. Radachy used the example of the Noble Ridge stream line behind lots where one of the owners had built their house and made their land flat. Soil and Water reported this to the Army Corps, who forced that homeowner to get an individual permit for the effect they had on the subplot.
- Ms. Pesec thought the Lake County Soil and Water Conservation District is very good at determining what is required for wetlands and are true experts in this field. They are in regular contact with the Army Corps.
- Mr. Aveni believed the U.S. Army Corps of Engineers operated in a different manner with a nationwide permit and provides a “no jurisdiction letter” to an applicant. Presumably, that is what the developer has. It has already been determined that the Corps did not have jurisdiction and thought it would be too complicated and onerous to go through this process to determine if they had used their 1/10.
- Mr. Zondag said he was aware of a precedence being set that a developer or builder could buy a subdivision, drop off a bunch of people, let them do whatever they please with the property and then say it was not their fault. Someone needs to be responsible for the total plan of the subdivision and that is the person who files the plat in the first place whether he sells it off or not. He believed this has been done this way for too long. Many communities now do not have any wetlands and have flooding issues. The Commission does not regulate wetlands right at this time, but they do have the ability to say whether they should be lifted or not when someone goes to look at a site. It was classified as a wetland for a reason and when we get a really wet season, it will become one again.
- Mr. Webster said the issue of sublots 24 and 25 where wetlands were disturbed might have been okay when the lot was sold and the builder impacted that wetlands. If the restrictions are taken off here, then the developer and builder would no longer have that responsibility because it would pass on to the new builder and the owner of that lot and it is possible we could have to do the same thing as was done in Noble Ridge. Both wetlands designations on sublots 5 and 40 that the owner has requested to change are no longer wetlands because of drainage issues and changes to the characteristics of that land. In doing this on subplot 5 and 40, it is possible wetlands would be disturbed in other areas that are unknown or not being considered at this time.
- Mr. Webster said that they had altered the utility easement on subplot 5 and 6 on the new plat, which must be corrected. Mr. Novak said the easement would be put back in its original place.
- Mr. Novak said changing utility easements to riparian easements as the County Utility Department wants would not be a benefit to the owners and they did not own the property

involved.

- Mr. Webster suggested changing stipulation 3 by removing sublots 1 and 25-30 from that language and making it a comment rather than a stipulation. Mr. Radachy suggested also taking sublots 6 and 7 out of stipulation 3 in order to eliminate going to the Lake County Commissioners.
- Stipulation 2 would remain.
- Mr. Radachy made a point of order that if stipulation 3 were changed to be a comment, then stipulation 1 should be changed to include only sublots 5 and 40.
- Mr. Brotzman stated proceeding with stipulation 4 is questionable as we are not sure how to respond in order to do the right thing. Mr. Aveni asked whether or not the Planning Commission had the jurisdiction to stipulate these additional criteria as part of the approval regarding the wetlands permit being obtained. He would like to have the County Prosecutor decide this.
- Mr. Smith also thought they should look at stipulation 5 by Soil and Water. Mr. Webster said he was not sure if Soil and Water were looking at the whole subdivision or just the resubdivision.
- Mr. Novak refused to table the request without talking to the developer.
- It was noted that the Commission had exactly 30 days yet to handle this, which would take us to our next meeting.

Mr. Smith moved to hold off making the decision on the replat of Nature Preserve South until the next meeting to be held on December 18, 2007, which is within the 30 day time limit set by the Regulations. Ms. Hausch seconded the motion.

Stormwater, Soil and Water, Mr. Ludwig and the Prosecutor should be invited to attend the next meeting. Ms. Nocero said to leave Stormwater out because there was nothing they could do.

Mr. Novak made a suggestion to have Soil and Water, Mr. Ludwig and a staff person meet prior to the next meeting to alleviate the same problems recurring at the next meeting. He also offered to ask the developer to officially table the request in the next couple days, but the members felt that was not necessary.

Mr. Brotzman called for a vote on this issue.

All voted "Aye".

## LAND USE AND ZONING

There was no land use and zoning report.

## REPORTS OF SPECIAL COMMITTEES

Mr. Webster said Mr. Harry L. Allen, Jr. requested to step down as Chairman of the Lake County Coastal Plan Committee because of his duties and responsibilities with the Lake County Port Authority. He is willing to continue as a member of the Committee. There will be a meeting on Thursday, November 29, 2007. A resolution of appreciation has been prepared for his services to date. Mr. Webster read the resolution:

## **RESOLUTION OF APPRECIATION OF HARRY L. ALLEN, JR.**

**WHEREAS HARRY L. ALLEN, JR.**, as a founding member of the Lake County Coastal Plan Committee, a.k.a., CMAG Coastal Plan Overview Committee and the CMAG Overview Committee, has successfully completed five years as Chairman and whose personal values led him to contribute his time, efforts and resources towards the social, environmental and economic betterment of the Lake County coastal communities and to lead this Committee through the completion and into the implementation phase of the Lake County Coastal Development Plan; and

**WHEREAS HARRY L. ALLEN, JR.**, is a visionary leader with a dream of the Lake County, Ohio shoreline and tributaries becoming a center for recreation, tourism, cultural and ecological adventure from the Chagrin River inlet east to the Geneva State Park; and

**WHEREAS HARRY L. ALLEN JR.**, is a civic-minded and community-oriented person whose efforts were instrumental in the fulfillment of the private, public, and philanthropic funding campaign to complement the ODNR Coastal Management Assistance Grant and The Cleveland Foundation grants that made the feasibility study a reality, and

**WHEREAS HARRY L. ALLEN, JR.**, has used fortitude, determination and encouragement to keep this membership focused thereby enabling them to overcome the obstacles barring the way to successfully accomplishing the set goals and duties of this Committee. His ability to bring diverse stakeholders to the table allowed this Committee to successfully complete and help the coastal communities to implement their components of the Lake County Coastal Development Plan.

**NOW, THEREFORE BE IT FURTHER RESOLVED**, the Lake County Planning Commission and the Lake County Coastal Plan Committee, in appreciation of his leadership as Chairman, commend his efforts to further the mission of the Lake County Coastal Plan Committee to promote recreational and economic opportunities of the Lake County coast for present and future generations through funding and planning strategies in cooperation with the public and private sectors.

**BE IT FURTHER RESOLVED**, the Lake County Coastal Plan Committee acknowledges all of the above and regretfully accepts the request of Harry L. Allen, Jr. to step down as Chairman of the Lake County Coastal Plan Committee and further acknowledge his continued support as a regular member in the future.

**ADOPTED HERETOFORE** by the Lake County Planning Commission on November 27, 2007 and the Lake County Coastal Plan Committee on November 29, 2007 with the consensus of their full memberships:



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Timothy C. Brotzman, Chairman  
Lake Co. Planning Commission

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Bruce Landeg, Vice Chairman  
Lake Co. Coastal Plan Committee

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Darrell C. Webster, Director  
Lake Co. Planning Commission

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Jason Boyd, Senior Planner  
Lake Co. Planning Commission

Mr. Schaedlich moved to approve the resolution for Mr. Harry L. Allen, Jr. and Mr. Siegel seconded the motion.

All voted "Aye".

#### CORRESPONDENCE

There was no correspondence.

#### OLD BUSINESS

There was no old business.

#### NEW BUSINESS

Mr. Webster noted that the staff has rekindled the offer to Grand River Village to do their comprehensive plan. A proposal has also been sent to Fairport Harbor Village to help update their zoning code and do site plan reviews for \$20,000 for a one-year contract.

#### PUBLIC COMMENT

There was no public comment.

#### ADJOURNMENT

Mr. Siegel moved to adjourn the meeting at 8:27 p.m. and Mr. Adams seconded the motion.

All voted "Aye".

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Timothy C. Brotzman, Chairman

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Darrell C. Webster, Director/Secretary